

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

TOMMIE LEE MCDOWELL, JR.,

Plaintiff,

v.

DENNIS HOMAN, *et al.*,

Defendants.

Case No. 3:22-CV-00166-CLB

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

[ECF No. 88]

Before the Court is Plaintiff Tommie Lee McDowell, Jr.'s ("McDowell") motion for reconsideration, (ECF No. 88), of this Court's March 14, 2024 Order (ECF No. 86), granting summary judgment in favor of Defendants Dennis Homan ("Homan") and Christopher Davis ("Davis") (collectively referred to as "Defendants"). Defendants responded, (ECF No. 89), and McDowell replied. (ECF No. 90.)

A motion to reconsider must set forth the following: (1) some valid reason why the court should revisit its prior order; and (2) facts or law of a "strongly convincing nature" in support of reversing the prior decision. *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). Reconsideration may be appropriate if (1) the court is presented with newly discovered evidence, (2) has committed clear error, or (3) there has been an intervening change in controlling law. *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). A motion for reconsideration is properly denied where it presents no new arguments. *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985). However, it "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters., Inc.*, 229 F.3d at 890. As the case law indicates, motions to reconsider are granted rarely. *See, e.g., School Dist. No. 1J*, 5 F.3d at 1263.

McDowell's motion for reconsideration asks that the order granting summary

1 judgment be set aside because the Court “overlooked or misunderstood” the points of  
2 fact and therefore erred in finding in favor of Defendants. (See ECF No. 88.) The Order  
3 granting Defendants’ motion for summary judgment found Defendants were entitled to  
4 summary judgment on all four claims raised by McDowell: (1) a Fourteenth Amendment  
5 procedural due process claim about the August 2021 disciplinary action against Homan  
6 (“Claim 1”); (2) a Fourteenth Amendment procedural due process claim about the June  
7 2022 disciplinary action against Homan and Davis (“Claim 2”); (3) a Fourteenth  
8 Amendment substantive due process claim about the June 2022 disciplinary action  
9 against Homan and Davis (“Claim 3”); and (4) conspiracy to violate Fourteenth  
10 Amendment procedural due process rights about the August 2021 disciplinary action  
11 against Davis (“Claim 4”). (See ECF No. 86.)

12 First, on Claim 1, the Order found that McDowell could not prevail because even if  
13 McDowell did have a constitutionally protected liberty interest, he was afforded all process  
14 due under the Fourteenth Amendment under the standard set by *Wolff v. McDonnell*, 418  
15 U.S. 539, 563-570 (1974). (*Id.* at 10-13.) The Order next considered Claim 4, as it alleged  
16 that Defendants conspired to violate his Fourteenth Amendment rights as set forth in  
17 Claim 1. (*Id.* at 8, 13-14.) The Order found that because the Court found that McDowell’s  
18 claim for the underlying constitutional violation, Claim 1, failed, the conspiracy claim  
19 based on those constitutional violations, Claim 4, also failed. (*Id.* at 13-14.) Next, the  
20 Order considered Claims 2 and 3 because they involved the same underlying facts and  
21 included overlapping legal principles. (*Id.* at 14.) As to both claims, the Order found  
22 without having to reach the issue of whether McDowell’s rights were violated by any other  
23 individuals, Defendants were entitled to summary judgment because Defendants were  
24 not personally involved. (*Id.* at 14-16.)

25 McDowell does not provide the Court with new evidence. Rather, he requests the  
26 Court reevaluate the same evidence which was already presented. (See ECF No. 88.)  
27 The Court finds no basis to conclude it made an error in its prior ruling. Accordingly, the  
28 Court finds that McDowell has offered no newly discovered evidence, the Court did not

1 commit clear error, the decision was not manifestly unjust, and there is no intervening  
2 change in controlling law. Therefore, the motion for reconsideration (ECF No. 88) is  
3 **DENIED.**

4 **IT IS ORDERED.**

5 **DATED:** April 18, 2024.

6   
7 **UNITED STATES MAGISTRATE JUDGE**